IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.197 OF 2006

M/s.Suyog Construction & Anr. ..Appellants.

V/s.

Ghatkopar Dipalaya Co-op.
Housing Society Limited & Ors. ..Respondents.

Mr.T.N.Subramanian a/w Mr.Snehal K.Shah,
Mr.Ramachandran N.and Ms.K.T.Latha i/b Narayanan &
Narayanan for the appellants.

Mr.Ajay Panicker for respondent No.1.

CORAM: A.M.KHANWILKAR,J
DATE : MARCH 22, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mr.Panicker waives notice for respondent No.1/original plaintiff, who is the contesting respondent in so far as the present appeal is concerned. Notice to respondent Nos. 2 to 9 is dispensed with by consent.

4. As short question is involved, appeal is taken up for final disposal forthwith by consent.

5. This appeal takes exception to the Judgment

and Order passed by the City Civil Court Mumbai dated 29th November, 2003 in Notice of Motion No. 4683 of 2003 in SC.Suit No.5382 of 2003. By this impugned order the Notice of Motion taken out by the plaintiff has been finally disposed of and the order of status quo granted has been continued till the disposal of the suit.

6. The limited question that arises for my consideration is whether it was open to the trial Judge to finally dispose of the Notice of Motion even when the issue of jurisdiction of the court has been raised by the defendants/appellants herein in paragraph-5 and 6 of the written statement. It is well established position that such course is not open to the trial Judge. The counsel for the respondent No.1/plaintiff however, submits that the issue of jurisdiction was not pressed on behalf of the appellant at the time of hearing of the Notice of Motion. Even so, the fact remains that the issue of jurisdiction has been specifically raised in the written statement by the appellants/defendants. The trial Judge was obliged to first frame the issue of jurisdiction on the basis of pleadings of the parties. If issue of jurisdiction arises for consideration on the basis of the pleadings, unless

that issue was expressly given up by the defendants, by virtue of section 9A of the C.P.Code, court cannot assume jurisdiction to proceed to finally dispose of the interim application one way or the other unless the said issue of jurisdiction is first answered. In the present case, the trial Judge has finally disposed of the Notice of Motion without answering the issue of jurisdiction and especially when there is nothing on record that the defendants had not pressed the issue of jurisdiction.

7. In the circumstances, impugned Judgment and Order is set aside and instead the Notice of Motion No.4683 of 2003 is restored to the file to its original number and the parties are relegated before the trial Judge, who will proceed with the matter in accordance with the law. Till further orders are passed by the trial judge, it is agreed by the appellants through counsel that the order of status quo, which was granted on earlier occasion as ad-interim relief in favour of the plaintiff will continue to operate till further order is passed by the trial court in that behalf.

8. The trial Judge may decide the issue of jurisdiction as expeditiously as possible as the suit

pertains to the year 2003, preferably by end of June, 2006.

9. Appeal disposed of on the above terms.